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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 11CR1270-LAB

11 FRANCISCO XAVIER ROJAS-  
12 SANCHEZ,

CASE NO. 11-CV-2668-LAB

13 Petitioner,

14 vs.

**ORDER DENYING 28 U.S.C. §  
2255 HABEAS PETITION**

15 UNITED STATES,

16 Respondent.

17 Rojas-Sanchez is currently serving a 63-month sentence for conspiracy to import  
18 cocaine and methamphetamine. *See United States v. Rojas-Sanchez*, 11-CR-1270-LAB.  
19 Now before the Court is his habeas petition brought pursuant to 28 U.S.C. § 2255, through  
20 which he seeks a sentence reduction. He seeks the reduction on the ground that, due to his  
21 alien status, he is ineligible for early release into a halfway house (and other penal benefits)  
22 in violation of his Fifth and Fourteenth Amendment rights to due process and equal  
23 protection. This is a familiar claim that aliens make in federal habeas petitions, using (or  
24 guided by) what appears to be a form pleading, and the Court has consistently rejected it.

25 To state an equal protection claim, a plaintiff must allege he was treated differently  
26 from other similarly situated persons, *see City of Cleburne v. Cleburne Living Ctr.*, 473 U.S.  
27 432, 439 (1985), and deportable aliens are not "similarly situated" to United States citizens.  
28 It is not an equal protection violation to allow United States citizen-inmates, who must re-

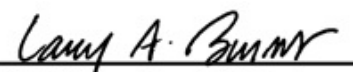
1 enter domestic society, to participate in rehabilitative or other programs while denying that  
2 privilege to deportable inmates. See, e.g., *Santos v. United States*, 940 F.Supp. 275, 281  
3 (D. Hawaii 1996) (one's status as deportable alien, which may result in ineligibility for less  
4 restrictive terms of confinement, cannot justify downward departure; plaintiff failed to state  
5 an equal protection claim "because deportable aliens are not 'similarly situated' to United  
6 States citizens"). The Supreme Court "has firmly and repeatedly endorsed the proposition  
7 that Congress may make rules as to aliens that would be unacceptable if applied to citizens."  
8 *Demore v. Kim*, 538 U.S. 510, 521-22 (2003).

9 This Court has previously rejected the claim that an alien's ineligibility for various  
10 prisoner programs or benefits violates that person's rights. See *Rendon-Inzunza v. United*  
11 *States*, 2010 WL 3076271 (S.D. Cal. 2010); *Lizarraga-Lopez v. United States*, 89 F.Supp.2d  
12 1166 (S.D. Cal. 2000). Those holdings stand. The purpose of halfway houses is to  
13 facilitate the reintegration of prisoners into the community, but prisoners in Rojas-Sanchez's  
14 position are released first to the Attorney General and then to a foreign community.  
15 Moreover, halfway houses are still custodial institutions wherein prisoners serve out their full  
16 sentences, and from which deportable aliens would be a unique flight risk.

17 No due process or equal protection issue arises merely because a defendant's alien  
18 status excludes him from certain programs available to citizens, within the prison system or  
19 without. Accordingly, Rojas-Sanchez's argument that the Court should consider his request  
20 for an additional downward departure on that basis is rejected. His habeas petition is  
21 accordingly **DENIED**. The Court also **DENIES** him a certificate of appealability. See 28  
22 U.S.C. § 2253(c)(2).

23  
24 **IT IS SO ORDERED.**

25 DATED: January 24, 2013

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27 **HONORABLE LARRY ALAN BURNS**  
28 United States District Judge